

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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JAMES D. OFELDT,

Plaintiff,

v.

NEVADA DEPARTMENT OF PAROLE
AND PROBATION, *et al.*,

Defendants.

Case No. 3:16-cv-00310-MMD-WGC

ORDER

On February 2, 2017, this Court issued a screening order dismissing Plaintiff's complaint in its entirety without leave to amend. (ECF No. 8 at 6.) In the complaint, Plaintiff argued that various parole and probation officers violated his due process rights because there were mistakes in Plaintiff's pre-sentence investigation ("PSI") report. (*Id.* at 4.) The complaint alleged that, even though Plaintiff's attorney raised these mistakes in court, the sentencing judge still followed the recommendation of parole and probation. (*Id.*) The complaint alleged that defendants failed to follow NRS § 176.145. (*Id.*) In the screening order, the Court found that the claim lies in habeas despite Plaintiff's attempt to couch his argument as a due process claim. (*Id.* at 5.)

On March 13, 2017, Plaintiff filed a motion for reconsideration. (ECF No. 11.) In the motion, Plaintiff states that the Court misunderstood his intentions because he was not trying to challenge the validity of his conviction or the length of his sentence. (*Id.* at 2.) Plaintiff states that defendants violated his due process rights and that such a claim is actionable under 42 U.S.C. § 1983. (*Id.*) Alternatively, Plaintiff seeks the ability to amend his complaint. (*Id.* at 3.)

1 A motion to reconsider must set forth “some valid reason why the court should
2 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to
3 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d
4 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented
5 with newly discovered evidence, (2) committed clear error or the initial decision was
6 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No.*
7 *1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not
8 an avenue to re-litigate the same issues and arguments upon which the court already has
9 ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

10 The Court denies Plaintiff’s motion for reconsideration. The Court has re-read
11 Plaintiff’s complaint and finds that Plaintiff’s claim lies in habeas. In *Nettles v. Ground*,
12 830 F.3d 922 (9th Cir. 2016), the Ninth Circuit explained that § 1983 claims were subject
13 to the Prison Litigation Reform Act’s (“PLRA”) administrative exhaustion requirements
14 because a prison’s administrative process was the best means of addressing those
15 claims. *Id.* at 933. “On the other hand, habeas corpus is the exclusive remedy to attack
16 the legality of the conviction or sentence, and for these sorts of claims the exhaustion
17 requirement gives a state court ‘an opportunity to correct its own constitutional errors’
18 before a federal court orders release, thus respecting traditional notions of federal-state
19 comity.” *Id.*

20 In this case, Plaintiff is not challenging a condition of his prison confinement.
21 Instead, Plaintiff is challenging errors made by parole and probation during Plaintiff’s
22 sentencing hearing. Pursuant to *Nettles*, this is the type of error that Plaintiff needs to
23 raise before the state court in order to give the state court an opportunity to correct its
24 own constitutional errors, including PSI due process violations. As such, the Court denies
25 Plaintiff’s motion for reconsideration.

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1 For the foregoing reasons, it is ordered that the motion for reconsideration (ECF
2 No. 11) is denied.

3 DATED THIS 22nd day of March 2017.

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5 MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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